

## **REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and the following remarks.

Claims 13, 44 - 71 and 84 are requested to be cancelled. Claims 13 and 84 were cancelled because they were a duplication of existing claims. Claims 44 – 71 were cancelled in order to allow Applicant to pursue different claimed innovations without incurring additional filing fees based upon the excess claim fee previously submitted.

Claims 26 and 72 are currently being amended.

Claims 99 through 121 are being added. Applicant notes that new claims 99-121 have been rewritten in the present Amendment and Reply, and differ from those in the Amendment and Reply of December 23, 2009 identified in the Notice of Non-Compliant Amendment.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-12, 14-43, 72-83 and 85-121 are now pending in this application.

### **A. Response to Notice of Non-Compliant Amendment**

Applicant filed an Amendment and Reply on December 23, 2009 in response to the Office Action mailed June 24, 2009. On April 27, 2010, Applicant received the present Notice of Non-Compliant Amendment indicating that Declarations cited with the Amendment and Reply of December 23, 2009 were improperly cited, and that claims added with the Amendment and Reply of December 23, 2009 should be removed. Applicants thank the Examiner for not

providing a final action, as discussed in the comments of the Notice of Non-Compliant Amendment.

In the present Amendment and Reply, the Declarations have been identified in an Information Disclosure Statement filed herewith, and discussion of the Declaration in the present Remarks has been revised. New claims 99-121 have been rewritten to more closely relate to the original claims, so as to avoid restriction. Section E below identifies support for the new claim in the original application. No new matter has been added.

**B. Obviousness Rejection – Blucher and Moyer**

Claims 1-5, 7-18, 20-36, 38-43, 47-52, 59-63, 67-76, 78-89 and 91-98 have been rejected under 35 USC § 103(a) as being obvious in light of the combined teachings of US Pat. No. 4510193 to Blucher and US Pat. No. 5159718 to Moyer. This rejection and the combination of references on which the rejection is made are respectfully traversed.

Blucher discloses a method and process for manufacturing a fabric material specifically intended for use in protective clothing such as chemical warfare suits. While Blucher discloses the use of active carbon as an adsorbent mounted to a sheet of fabric, the clear teachings of this patent are directed to protective clothing (column 1, lines 24 - 25) intended to safeguard the wearer of such a garment from *external*, harmful agents such as mustard gas and chemical warfare agents (column 5, lines 19 - 24). The entirety of the teaching of Blucher is directed to protective clothing which shields the wearer of the garment from harmful agents found external to the garment - the teaching of this patent is strictly limited to preventing the flow of harmful agents from the outside in.

Moyer discloses a garment intended to be worn while hunting which integrates a camouflage color scheme on the exterior surface thereof in combination with a highly visible orange color known as "hunter's orange."

**1. Combination of Blucher and Moyer**

First, applicant asserts that there is no teaching, suggestion or motivation for combining Blucher and Moyer. As noted above, Blucher is directed to a structure and means for creating a fabric used in protective clothing such as chemical warfare suits (col. 5, lines 19-28). Quite distinct from this, Moyer is directed to a “blazing fluorescent orange” garment used while hunting wild game (Abstract). A careful review of the teaching of Blucher shows that it is particularly directed to clothing intended to shield the wearer from harmful external substances such as mustard gas and nerve poisons, and has no relation to garments used while hunting wild game. There is no incentive, teaching or motivation for combining these disparate references except to attempt to reach applicants claimed innovations.

Second, Applicant notes that several Declarations, cited in the Information Disclosure Statement filed herewith, were gathered during the prosecution of related cases. Applicant provides these Declarations for the Examiner’s general consideration when evaluating the issue of non-obviousness, especially with regard to the secondary indicia of long-felt need, commercial success, unexpected results, and skepticism of experts. Applicant reserves the right to re-submit any or all of the Declarations, or contents thereof, as one or more new Declarations that are particularly directed to the claims of the present application.

**2. Specific Claim Rejections**

Claims 14 and 16 are further not obvious in light of the alleged combination of Blucher and Moyer because each of these claims specifically describes the activated charcoal as being “impregnated into the base layer” of the article of clothing. The combined teachings of Blucher and Moyer fail to teach any means for impregnating an odor adsorbing agent into an article of clothing. Applicant respectfully requests reconsideration and withdrawal of the § 103 rejection under the combination of Blucher and Moyer.

**C. Obviousness Rejection – Blucher, Moyer and Slagle**

Claims 6, 19, 37, 53, 64-66, 77 and 90 have been rejected under 35 USC § 103(a) as being obvious in light of the combined teachings of Blucher and Moyer in combination with US Pat. No. 5445863 to Slagle. This rejection and the combination of references on which the rejection is made are respectfully traversed.

Rejection of claims 6, 19, 37, 53, 64-66, 77 and 90 in light of the combined teachings of Blucher, Moyer and Slagle is improper because Slagle is not prior art against the present application. Slagle's filing date is May 3, 1994 whereas the current Application asserts priority back to November 25, 1991. Slagle is not prior art under 35 USC § 102 and therefore a rejection based upon this reference under 35 USC § 103 is improper. Applicant respectfully requests reconsideration and withdrawal of the § 103 rejection under the combination of Blucher, Moyer, and Slagle.

**D. Anticipation Rejection – Blucher**

Claims 44-46 and 54-58 have been rejected under 35 USC § 102(b) as being anticipated by Blucher. These rejections are moot in view of the fact that claims 44-46 and 54-58 have been cancelled.

**E. New Claims**

The Notice of Non-Compliant Amendment mailed April 27, 2010 indicated that the “applicant needs to remove the newly added claims 99-121 [provided in the Amendment and Reply of December 23, 2009] since they claim a new structural invention different to the apparatus that was claimed in the last set of examined claims.” The Notice of Non-Compliant Amendment went on to state that “the present action is being made as a Non-compliant action in order to allow applicant's representative to correct the response without making the action final.”

New claims 99-121 have been rewritten to more closely relate to the original claims, so as to avoid restriction. In addition to other paragraphs, claims, and figures of the original application, the new claims are supported as follows:

- Support for new independent claim 99 is provided in claims 26 and 72.
- Support for new claims 100-101 is provided in paragraph [0029].
- Support for new claim 102 is provided in paragraph [0030].
- Support for new claims 103-105 is provided in paragraph [0036].
- Support for new claim 106 is provided in paragraph [0028].
- Support for new independent claim 107 is provided in claims 1-3, 6, and 14.
- Support for new claims 108-110 is provided in paragraph [0036].
- Support for new claims 111-112 is provided in paragraph [0028].
- Support for new claims 113-121 is provided in paragraph [0036].

No new matter has been added. Applicant respectfully submits that new claims 99-121 are patentable for at least the same reasons provided above with regard claims 1-12, 13-44, 72-83, and 85-98 are patentable, and requests full consideration of the new claims.

#### **F. Double Patenting**

Finally, claims 1-98 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-27 of U.S. Patent No. 6,134,718; claims 1-21 of U.S. Patent No. 6,009,559; claims 1-21 of U.S. Patent No. 5,790,987; claims 1-6 of U.S. Patent No. 5,539,930; and claims 1-12 of U.S. Patent No. 5, 383,236.

Applicant requests that the double patenting rejections be held in abeyance until allowable independent claims are indicated by the Examiner in the present Application (since a timely filed terminal disclaimer would overcome the rejection such that further consideration of the claims on that rejection should not be necessary). 37 C.F.R. § 1.111(b).

Applicant further notes that new claim 99-121 have been added, which Applicant believes include one or more independent and/or dependent claims that should not be subject to

an obviousness-type double-patenting rejection over any of the above-cited patents. Applicant respectfully requests full consideration of the new claims with regard to the issue of obviousness-type double-patenting.

**G. Supplemental IDS**

Applicant has just successfully concluded an *Ex Parte* Reexamination of one of patents in the family tree of the present Application. A copy of the decision of the Board of Patent Appeals is included in the Supplemental IDS. This Reexamination, Ser. No. 90/007,331, has generated hundreds of pages of documentation such as prior art, office actions, amendments, arguments and supporting evidence. Applicant's counsel contacted the Examiner in charge of the present Application on December 22, 2009 to discuss the most appropriate manner in which to bring this potentially relevant information to the attention of the Examiner. The Examiner indicated that she was familiar with this Reexamination and therefore Applicant was requested not to submit copies of all the various office actions, amendments, arguments and supporting evidence. Instead Applicant was requested to submit copies of the patent documents and printed publications which formed the basis of the current claim rejections.

Submitted simultaneously with this Amendment and Reply is a Supplemental Information Disclosure Statement (along with supporting documentation) including the patent documents and printed publications which form the basis of the current claim rejections in Reexamination Ser. No. 90/007,331. Applicant invites the Examiner to review the other documents filed in that case including prior art, office actions, amendments, arguments and supporting evidence.

**CONCLUSION**

Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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